

CIVIL MISC. APPEAL No. 1406 of 2004

M.D., R.S.R.T.C. & ANR

V/S

LR'S OF DEVILAL

Mr. SANGEET LODHA, for the appellant / petitioner

Date of Order : 15.12.2004

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant.

The Workmen's Compensation Commissioner has passed the award of compensation on account of the injury suffered by the workman, Devi Lal, who was driving the bus of the corporation, and the bus met with an accident on 30.1.99.

The contention of the learned counsel for the appellant is that as a matter of fact, the workman himself was driving the vehicle rashly and negligently, and caused the accident, which resulted into death of one passenger, and injury to 13 passengers, for which claim petitions have been filed under Section 166 of the Motor Vehicle Act, wherein the workman was found to be negligent to the extent of 80%, and various awards for compensation of various amounts have already been passed, which awards are already subject matters in various appeals before this Court by the Corporation. Thus, the workman himself was guilty of rashness and negligence, as such, no compensation could be awarded.

The other submission made is that there is no material on record to show that the workman had suffered any total, or partial permanent disablement, or a disablement for a period exceeding three years, as required by Section 3, and, therefore also, he was not entitled for any compensation.

The next submission made is that according to the provisions of Proviso (b) (ii) & (iii) also, the appellant is not liable for any compensation, as the act of the workman amounted to willful disobedience of the order expressly given for the purpose of securing the safety of the workman, or at least it amounts to willful disregard by the workman of any safety guard or other device, which he knew to have been provided for the purpose of securing the safety of workman.

I have considered the submissions.

In my view, the sum and substance of the argument is two fold, firstly, that the workman did not suffer any permanent disablement, whether partial or total, and the other part of submission is that the

workman himself was negligent in causing the accident with the result that rather the corporation suffered huge losses by way of decree of compensation in various claims, and that the accident was result of his willful disregard of the safety devices.

So far as the aspect of suffering injury resulting into permanent disablement is concerned, the learned Commissioner has found that the workman produced a certificate, Ex.16 certifying the workman to have suffered 20% permanent disablement. Though, the workman had claimed 100% loss of earning capacity, but then, the learned Commissioner has considered the extent of disability to be 20% only, and has calculated the compensation at 20% in accordance with the provisions of Section 4 (1) (c) (ii) of the Workmen's Compensation Act. This contention, therefore, cannot be accepted.

Taking up of the second aspect of the contention, all that has been pleaded in the written-statement by the appellant is in para 4 as “..वास्तव में उक्त दुर्घटना प्रार्थी स्वयं की लापरवाही के कारण घटित हुई जिसमें एक महिला की मृत्यु हो गई एवं 13 यात्री घायल हुए।..”. Then in para 6, it has been pleaded as “..प्रार्थी की लापरवाही एवं गैर जिम्मेदार से घटित उक्त दुर्घटना के फलस्वरूप प्रार्थी को चोटें अवश्य आई होंगी..”. Then in the additional pleas in para 1, it has been pleaded as under:

“..दिनांक 30.1.99 को प्रार्थी की लापरवाही एवं गैर जिम्मेदारी से उक्त दुर्घटना कारित हुई।..”

This is the whole allegation on the aspects submitted on the anvil of the various Provisos to Section 3 of the Act.

I may gainfully quote the Proviso (i) (ii) and (iii) of Clause (b), which read as under:

“(i) the workman having been at the time therefore under the influence of drink of drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.”

Admittedly, it is not a case, that the workman was under influence of drink of drug. Then, so far Second Proviso is concerned, it clearly contemplates willful disobedience of the workman, to an “order expressly given” or “Rule expressly framed”. From the reading of entire written-statement, I do not find any pleading about any express order to have been given, nor any Rule expressly framed, or shown, for the purpose of securing safety of the workman, and there is no disregard or willful disobedience of workman of any such order or rule. Likewise, so far third Proviso is concerned, this obviously has no application to

the present case, inasmuch as, there is no pleading in this regard in the written-statement. This Proviso inherently is intended to cover the cases of running industries, where safety guards and safety devices are provided, and is not applicable to circumstances of the present case.

Learned counsel has not been able to show any other law, or even a pronouncement, to show, that the workman is not entitled to compensation, where he suffers injury in an accident arising out of, and during course of employment, if the accident is a result of negligence of the workman himself.

In that view of the matter, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA), J.

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